

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION I

CA07-758

BETTY RHODES, PERSONAL
REPRESENTATIVE OF THE ESTATE OF
SHALONDA GAINES

APPELLANT

V.

GNC OF STAR CITY, INC. A/K/A
GARDNER NURSING CENTER D/B/A
GARDNER NURSING CENTER AND
RELIANCE HEALTH CARE
MANAGEMENT, INC.

APPELLEES

FEBRUARY 27, 2008

APPEAL FROM THE LINCOLN
COUNTY CIRCUIT COURT
[NO. CIV-2005-3-4-1]

HON. BERLIN C. JONES, JUDGE

REVERSED AND REMANDED

The underlying action in this case involves medical malpractice and wrongful death. Appellant Betty Rhodes, as personal representative of the estate of her daughter, Sholanda Gaines, appeals from an order of the circuit court. The circuit court order dismissed her complaint for lack of subject-matter jurisdiction because it was filed before appellant's letters of administration were issued by the county clerk. We reverse and remand.

Ms. Gaines died on January 14, 2003. On June 12, 2003, the circuit court entered an order appointing appellant as personal representative of Ms. Gaines's estate. On January 5, 2005, appellant filed a complaint for medical negligence against appellees, GNC of Star City, Inc., and Reliance Health Care Management, Inc., alleging that Ms. Gaines developed a severe infection and died while a patient in appellees' nursing home in Star City. The Letters

of Administration, authorizing appellant to act as administrator of Ms. Gaines's estate, were issued and filed on January 6, 2005.

On January 17, 2006, appellees filed a motion to dismiss for lack of subject-matter jurisdiction, contending that appellant's complaint was null and void because she had no legal authority to file a complaint on behalf of Ms. Gaines until the letters of administration were issued by the probate clerk. Because her complaint was filed on January 5, 2005, and the letters of administration were issued on January 6, 2005, appellees argued that the circuit court had no subject-matter jurisdiction over the complaint. The circuit court agreed and dismissed the complaint.

The 2007 General Assembly enacted Act 438, which amended the statutory provisions pertaining to the issuance of letters of administration. The amendment provides that the order appointing the administrator empowers the administrator to act and that letters of administration "are not necessary to empower the person appointed to act for the estate." Ark. Code Ann. § 28-48-102(d) (Supp. 2007). Our supreme court held in *Steward v. Statler*, 371 Ark. 351, ___ S.W.3d ___ (Nov. 1, 2007), that Act 438 was procedural and was intended to be applied retroactively. See also *Banks v. Wilkin*, ___ Ark. App. ___, ___ S.W.3d ___ (Jan. 23, 2008).

In this case, the order appointing appellant as personal representative of Ms. Gaines's estate was entered on June 12, 2003, over a year before appellant filed her complaint on January 5, 2005. In light of Act 438 of 2007 and the supreme court's decision in *Steward*, the

circuit court erred as a matter of law in dismissing appellant's complaint. Therefore, we reverse and remand this matter to the circuit court for reinstatement of the complaint.¹

Reversed and remanded.

HART and MARSHALL, JJ., agree.

¹Appellees conceded in their brief that this case should be reversed and remanded in light of the supreme court's opinion in *Steward, supra*. On February 7, 2008, appellant filed a motion to advance and reverse in light of *Steward* and appellees' concession. Appellees responded on February 12, 2008, stating that they had no objection to the relief sought by appellant. Because of our decision herein, we need not rule on appellant's motion.